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36735 7590 06/22/2005 EXAMINER MOSER, PATTERSON & SHERIDAN, L.L.P. 3040 POST OAK BOULEVARD, SUITE 1500	TION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
MOSER, PATTERSON & SHERIDAN, L.L.P. 3040 POST OAK BOULEVARD, SUITE 1500	86,985	10/16/2003	Frank Akselberg	MRKS/0128	.8123
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3751	•			3751	•

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Application No. AKSELBERG, FRANK								
Examiner Peter T. deVore 3751 The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Examiner for them may be available under the previoline at 31 CPR 1.135(b). In or event, however, may a reply be similarly filed If NO period for reply is appelled above, he maximum shalutory principal will make the specified above, he maximum shalutory principal will make the specified above, he maximum shalutory principal will make the statutory minimum of titiny (30) days wall be considered timely. If NO period for reply is appelled above, he maximum shalutory principal will make the statutory minimum of titiny (30) days wall be considered timely. If NO period for reply specified above, he maximum shalutory principal will make the statutory minimum of titiny (30) days wall be considered timely. If NO period for reply is applied above, he maximum shalutory principal will make the statutory minimum of titiny (30) days wall be considered timely. If NO period for reply is applied above, he maximum shalutory principal will make the statutory minimum of titiny (30) days wall be considered timely. If NO period for reply specified above, he maximum shalutory principal will be shallow the statutory minimum of titiny (30) days wall be considered timely. If NO period for reply specified above, he maximum shalutory principal and visit timely filed. If NO period for reply is applied timely filed. If NO period for reply is applied timely filed. If NO period for reply is applied timely filed. If NO period for reply is applied timely filed. If NO period for reply is applied timely filed. If NO period for reply is applied timely filed. If NO period for reply is applied timely filed. If NO period for reply is applied timely filed. If NO period for reply is applied timely filed. If NO period for		Application No.	Applicant(s)					
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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Mercier.

The Mercier reference discloses an assembly comprising a pump 11, a microvalve 34', an inlet 28, an outlet 36, a valve body 40, a pilot actuator having a first portion 38 and a second portion 37, and a pressure relief valve 80.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 5-7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2092717 (Weirich).

The Weirich reference discloses a pilot operated check valve comprising a housing 10a, a valve body/ball 11, a valve seat 13, a pilot piston rod/pilot actuator

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comprising a rod 24 and a piston 17, a gasket 25, a valve spring 12, a pilot spring 20, an inlet port 14, an outlet port 16, a pilot port 23, and a pilot drain 21, but remains silent as to the dimensions of the valve. However, it would have been obvious to make the valve to have an external diameter of less than ten millimeters, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 2336.

Claims 1, 2, and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seaney.

The Seaney reference discloses a pilot operated check valve comprising a valve body/ball 46, a valve seat 43, a pilot piston rod 37, a valve spring 47, a pilot spring 59, an inlet port 58, an outlet port 45, and a valve block 11, but remains silent as to the dimensions of the valve. However, it would have been obvious to make the valve to have an external diameter of less than ten millimeters, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 2336.

Claims 8, 10-17, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weirich in view of Eike.

The Weirich reference discloses a valve as discussed supra, but does not disclose seals externally surrounding the housing and arranged between the ports so that the housing engages a recess within a valve block as claimed. However, the Eike reference discloses a similar valve having seals around the housing and between the

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ports (see Figure 4) and a valve block surrounding the valve (see Figure 3) for convenient connection of the valve to its associated conduits. It would have been obvious to employ seals and a valve block as claimed with the Weirich valve in view of Eike for convenient connection of the valve to its associated conduits.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mercier in view of Block.

The Mercier reference discloses an assembly as discussed supra, but does not disclose a gasket around the pilot actuator. However, the Block reference discloses a similar assembly including a gasket 41 around the pilot actuator (see Figure 2) to ensure proper isolation of pressure between the two ends of the actuator. It would have been obvious to employ a gasket around the pilot actuator of the Mercier device in view of Block to ensure proper isolation of pressure between the two ends of the actuator.

Response to Arguments

Applicant's arguments with respect to claims 10-19 have been considered but are most in view of the new ground(s) of rejection.

Applicant's arguments regarding claims 1-3 and 5-9 have been fully considered but they are not persuasive. Applicant relies on a statement in the specification that "valves having ordinary dimensions cannot be scaled down for use in microvalves" to show that the prior art valves cannot be modified to have the claimed smaller dimensions. However, in Gardner v. TEC Systems, Inc., 725 F.2d 1338, cert. denied, 469 U.S. 830, it was held that absent a showing that a device having the claimed

dimensions would perform differently than the prior art device, the device is not patentably distinct from the prior art. See MPEP 2144.04(IV)(A) 2nd para. It is the Examiner's position that Applicant's reliance on a general statement to that effect in the specification does not constitute a sufficient showing.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Kot, Yang, and Presnell references disclose similar valve assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T. deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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